

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
OF LEWIS COUNTY, WASHINGTON**

**IN RE:**

APPROVAL OF AN INTERGOVERNMENTAL AGREEMENT )  
BETWEEN THE OFFICE OF COMMUNITY DEVELOPMENT )  
AND LEWIS COUNTY PROVIDING GRANT FUNDING FOR )  
THE REVIEW AND UPDATE OF THE RURAL AND )  
TRANSPORTATION ELEMENTS OF THE COMPREHENSIVE )  
PLAN, REVIEW OF DEVELOPMENT REGULATIONS )  
FOR COMPLIANCE WITH THE GROWTH MANAGEMENT )  
ACT AND THE 2002 UPDATE REQUIREMENTS )

**RESOLUTION NO. 02 - 005**

WHEREAS, Lewis County adopted a Comprehensive Plan and Environmental Impact Statement (EIS) on June 1, 1999 and has subsequently adopted implementing development regulations; and

WHEREAS, The Western Washington Growth Management Hearings Board has invalidated portions of the Lewis County Comprehensive plan and implementing development regulations; and

WHEREAS, Lewis County is required to review its comprehensive plan and development regulations subject to the requirements of Chapter 36.70A.180 RCW, including a review of the Critical Areas Ordinance and Best Available Science; and

WHEREAS, Lewis County desires to comply with the GMA; and


WHEREAS, the Washington State Office of Community Development has indicated that it will provide funding in the amount of \$86,250 for the 2002-2003 biennium (\$43,125 for the fiscal year ending June 30, 2002, and \$43,125 for the fiscal year ending June 30, 2003);

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained in the attached "Intergovernmental Agreement Washington State Department of Community, Trade and Economic Development, Contract Number s02-6300-098", the Board of County Commissioners approves the attached Intergovernmental Agreement and authorizes the Director of Community Development to sign the contract.

DONE IN OPEN SESSION this 7<sup>th</sup> day of Jan., 2002.

**BOARD OF COUNTY COMMISSIONERS  
LEWIS COUNTY, WASHINGTON**

  
Chairman

  
Member

  
Member

APPROVED AS TO FORM:  
JEREMY RANDOLPH, Prosecuting Attorney  


**INTERGOVERNMENTAL AGREEMENT  
WASHINGTON STATE  
DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT**

**CONTRACT NUMBER: s02-63000-098**

This AGREEMENT, entered into by and between Lewis County (hereinafter referred to as the GRANTEE) and the Washington State Department of Community, Trade and Economic Development (hereinafter referred to as the DEPARTMENT), WITNESSES THAT:

WHEREAS, the DEPARTMENT has the statutory authority under RCW 43.330.050(5) to cooperate with and provide assistance to local governments and local agencies serving the communities of the state for the purpose of aiding orderly, productive, and coordinated development of the state; and

WHEREAS, the DEPARTMENT also has the responsibility to administer programs and projects assigned to the DEPARTMENT by the Governor or the Washington State Legislature; and

WHEREAS, the DEPARTMENT has the statutory responsibility under RCW 36.70A.190(1) to establish a program of financial assistance and incentives to counties, cities, and towns to encourage and facilitate the adoption and implementation of comprehensive plans and development regulations throughout the state; and

WHEREAS, the DEPARTMENT desires to engage the GRANTEE to perform certain tasks as hereinafter specified.

NOW, THEREFORE, in consideration of covenants, conditions, performances, and promises hereinafter contained, the parties hereto agree as follows:

1.     FUNDING  
The total funds to be disbursed to the GRANTEE, for the agreement period shall not exceed eighty-six thousand two hundred fifty dollars (\$86,250).
2.     AGREEMENT PERIOD  
The effective date of this AGREEMENT shall be July 1, 2001. The termination date shall be June 30, 2003.
3.     SERVICE PROVISIONS  
Funds provided to the GRANTEE under this AGREEMENT shall be used solely for activities undertaken to fulfill the mandates required by the Growth Management Act to implement the GRANTEE'S growth management strategy as described in ATTACHMENT: SCOPE OF WORK, which, by this reference, is made a part of this AGREEMENT.
4.     DISBURSEMENT/REIMBURSEMENT PROVISIONS

The GRANTEE shall submit an invoice voucher (Form A-19) to the DEPARTMENT upon signing this AGREEMENT for an amount equal to no more than thirty thousand one hundred eighty-seven dollars (\$30,187). No later than June 30, 2002, and upon completion of that portion of the scope of work to that date, the GRANTEE shall submit an invoice voucher to the DEPARTMENT for an amount equal to no more than twelve thousand nine hundred thirty-eight dollars (\$12,938).

On or after July 1, 2002, and upon completion of that portion of the scope of work to that date, the GRANTEE shall submit an invoice voucher to the DEPARTMENT for an amount equal to no more than thirty thousand one hundred eighty-seven dollars (\$30,187). Upon completion of the entire scope of work, no earlier than July 1, 2002, and no later than the expiration of this AGREEMENT, the GRANTEE shall submit an invoice voucher to the DEPARTMENT for an amount equal to no more than twelve thousand nine hundred thirty-eight dollars (\$12,938). Any funds apportioned to be distributed by the terms of this AGREEMENT and not requested by the GRANTEE, or, if requested and not approved for distribution by the DEPARTMENT, shall be forfeited by the GRANTEE.

5. NONASSIGNABILITY

Neither this agreement, nor any claim arising under this agreement shall be transferred or assigned by the GRANTEE. *PROVIDED that, in order to establish a review and evaluation program pursuant to RCW 36.70A.215, the GRANTEE may consult, coordinate, and contract with the cities and towns within the county serviced by this AGREEMENT and may contract for the personal services of consultants.*

6. RECORDS AND DOCUMENTS

The GRANTEE shall maintain books, records, documents and other evidence of accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by law, rule, regulation, or contract. The GRANTEE will retain all books, records, documents, and other materials relevant to this AGREEMENT for six years from the date of final payment, and make them available for inspection by persons authorized under this provision.

7. RIGHT OF INSPECTION

The GRANTEE shall provide right of access to its facilities to the DEPARTMENT, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this AGREEMENT.

8. NONDISCRIMINATION

During the performance of this AGREEMENT, the GRANTEE shall comply with all federal and state nondiscrimination laws, including, but not limited to chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq., the Americans with Disabilities Act.

In the event of the GRANTEE noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this AGREEMENT may be rescinded, canceled or terminated in whole or in part, and the GRANTEE may be declared ineligible for further AGREEMENTS with the DEPARTMENT. The GRANTEE shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the DISPUTES procedure set forth here in.

9. GRANTEE NOT EMPLOYEE OF THE DEPARTMENT

The GRANTEE and his/her employees or agents performing under this AGREEMENT are not employees or agents of the DEPARTMENT. The GRANTEE will not hold himself/herself out as nor claim to be an office or employee of the DEPARTMENT or of the state of Washington by reason thereof, nor will the GRANTEE make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW or Chapter 28B.16 RCW.

10. AGREEMENT AMENDMENTS

The DEPARTMENT and the GRANTEE may, from time to time, request changes to this AGREEMENT. Any such changes that are mutually agreed upon by the DEPARTMENT and the GRANTEE shall be incorporated herein by written amendment to this AGREEMENT. *It is mutually agreed and understood that no alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein, shall not be binding.*

AGREEMENT amendments shall not be made which result in an extension of the CONTRACT period beyond June 30, 2003.

11. DISPUTES

Except as otherwise provided in this AGREEMENT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the GRANTEE and a third party mutually agreed by both parties. The team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

12. TERMINATION OF AGREEMENT

If, through any cause, the GRANTEE shall fail to fulfill in a timely and proper manner its obligations under this AGREEMENT, or if the GRANTEE shall violate any of its covenants, agreements or stipulations of this AGREEMENT, the DEPARTMENT shall thereupon have the right to terminate this AGREEMENT and withhold the remaining allocation if such default or violation is not corrected within twenty (20) days after written notice describing such default or violation is received by the GRANTEE's representative.

Notwithstanding any provisions of this AGREEMENT, either party may terminate this AGREEMENT by providing written notice of such termination, specifying the effective date thereof, at least thirty (30) days prior to such date. Reimbursement for services performed by the GRANTEE, and not otherwise paid for by the DEPARTMENT prior to the effective date of such termination, shall be as the DEPARTMENT reasonably determines.

In the event funding from the state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this AGREEMENT and prior to normal completion, the DEPARTMENT may unilaterally reduce the scope of work and budget or terminate this AGREEMENT.

15. SPECIAL PROVISION

The DEPARTMENT'S failure to insist upon the strict performance of any provision of this AGREEMENT or to exercise any right based upon breach thereof or the acceptance of any performance during such breach shall not constitute a waiver of any right under this AGREEMENT.

16. HOLD HARMLESS

It is understood and agreed that this AGREEMENT is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture or partnership is formed as a result of this AGREEMENT. Each party hereto agrees to be responsible and assumes liability for its own negligent acts or omissions, or those of its officers, agents, or employees to the fullest extent required by law, and agrees to save, indemnify, defend, and hold the other party harmless from any such liability. In the case of negligence of both the DEPARTMENT and the GRANTEE, any damages allowed shall be levied in proportion to the percentage of negligence attributable to each party, and each party shall have the right to seek contribution from the other party in proportion to the percentage of negligence attributable to the other party.

This indemnification clause shall also apply to any and all causes of action arising out of the performance of work activities under this AGREEMENT by a consultant through a personal services contract with the GRANTEE as permitted by paragraph 5 herein. Each contract between the GRANTEE and such consultant for services or activities utilizing funds provided in whole or in part by this AGREEMENT shall include a provision that the DEPARTMENT and the state of Washington are not liable for damages or claims from damages arising from any such consultant's performance.

17. GOVERNING LAW AND VENUE

The AGREEMENT shall be construed and enforced in accordance with, and the laws of the State of Washington hereof shall govern the validity and performance. Venue of any suit between the parties arising out of this AGREEMENT shall be the superior court of Thurston County, Washington.

18. SEVERABILITY

In the event any term or condition of this AGREEMENT or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, and

applications of this AGREEMENT which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this AGREEMENT are declared severable.

19. REDUCTION IN FUNDS

The DEPARTMENT may unilaterally terminate all or part of this AGREEMENT, or may reduce its scope of work or budget under this AGREEMENT, if there is a reduction of funds by the source of those funds, and if such funds are the basis for this AGREEMENT.

20. RECAPTURE OF FUNDS

In the event that the GRANTEE fails to expend state funds in accordance with state law or the provisions of this AGREEMENT, the DEPARTMENT reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance.

Such right of recapture shall exist for a period not to exceed six (6) years following termination of the AGREEMENT. Repayment by the GRANTEE of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its cost thereof, including reasonable attorney's fees.

21. ACKNOWLEDGEMENT OF STATE FUNDING

A. The GRANTEE shall provide all project-related press releases to the DEPARTMENT. Press releases shall identify the DEPARTMENT as a project financier.

B. Publication such as reports and pamphlets which are developed totally or in part with funds provided under this Agreement shall give credit to the funding source by including the following: "Funds made available through the Washington State Department of Community, Trade and Economic Development."

22. OWNERSHIP OF PROJECT MATERIALS

A. All finished or unfinished documents, data, studies, surveys, drawings, models, photographs, films, duplicating plates, computer disks and reports prepared by the GRANTEE under this Agreement shall be works for hire under U.S. copyright law. The DEPARTMENT may duplicate, use, and disclose in any manner and for any purpose whatsoever, all materials prepared under this Agreement.

B. The GRANTEE must have prior approval of the DEPARTMENT to produce patents, copyrights, patent rights, inventions, original books, manuals, films, or other patentable or copyrightable materials, in whole or in part with funds received under this Agreement. The DEPARTMENT reserves the right to determine whether protection of inventions of discover shall be disposed of and administered in order to protect the public interest. Before the GRANTEE copyrights any materials produced with funds under this Agreement, the DEPARTMENT reserves the right to negotiate a reasonable royalty fee and agreement.

23. ENTIRE AGREEMENT

This AGREEMENT including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind any of the parties within.

24. ADMINISTRATION

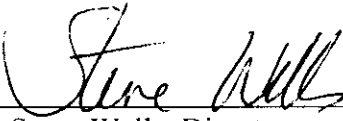
A. The DEPARTMENT'S representative shall be  
Peter Riley, (360) 725-3059

B. The GRANTEE'S representative shall be  
Bob Johnson, (360) 740-2773

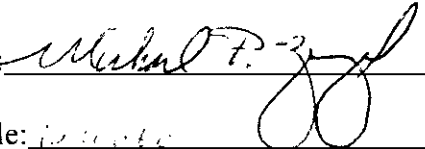
IN WITNESS WHEREOF, the DEPARTMENT and the GRANTEE have executed this AGREEMENT as of the date and year written below:

DEPARTMENT OF COMMUNITY, TRADE  
AND ECONOMIC DEVELOPMENT

LEWIS COUNTY

By:   
Steve Wells, Director  
Local Government Division

Date: 1-25-02

By:   
Title: Director

Date: 01-29-02

Federal Tax Identification Number

91-6601351

Approved as to Form

Melissa Burke-Cain  
Assistant Attorney General

November 30, 2001  
Date

**ATTACHMENT: SCOPE OF WORK  
LEWIS COUNTY  
CONTRACT s02-63000-098**

The GRANTEE is responsible for the preparation of all contract deliverables set forth below. The process and product shall be substantially consistent with the GRANTEE's grant application submitted to the Department for this round of funding and with the requirements of the Growth Management Act. Deliverables will be provided to the Department in electronic format wherever possible. At the Department's or the GRANTEE's request, deliverables may be provided in paper format. All draft ordinances and resolutions developed by the GRANTEE in the completion of this AGREEMENT shall be submitted to the DEPARTMENT at least sixty day prior to adoption. All ordinances and resolutions adopted by the GRANTEE in the completion of this AGREEMENT shall be submitted to the DEPARTMENT per RCW 36.70A.106.

**Project Description:**

Growth Management grant funds will be used in partial support of the following:

FY '02: Compliance. In response to Western Growth Management Hearings Board (WGMHB) decisions, review and update the rural and transportation elements of the comprehensive plan and complete an environmental impact statement for the comprehensive plan and development regulations, including extensive public participation.

FY '03: 2002 Review and Critical Areas Ordinance. Once the County has resolved compliance issues with the WGMHB, the County will go back and review the other parts of the comprehensive plan and development regulations to comply with the 2002 review and update requirement of the GMA. Particular attention will be paid to the critical areas ordinance and "best available science".

**FY '02 Milestones**

November 2001: Citizen's Advisory Committee recommendations presented to the Planning Commission.

November/December 2001: Planning Commission public hearings on proposed revisions to the comprehensive plan and development regulations. The draft environmental impact statement is expected be available at this time.

Winter/Spring 2002: Board of County Commissioners review of Planning Commission recommendations, public hearings and formal adoption. Issuance of the final environmental impact statement is expected to accompany adoption of plan and development regulation revisions.



## FY '02 Deliverables

By June 15, 2002 the County will submit draft comprehensive plan and development regulation amendments, as appropriate, and a draft environmental impact statement. If amendments are not adopted by this time, the County will submit a County resolution declaring the County's timeline and target date for adoption of the amendments and issuance of the final environmental impact statement.

## FY '03 Milestones

July to September 2002 – Planning Commission will commence review of Critical Areas regulations. Regulations will be reviewed for compliance with state requirements and consistency with the Comprehensive Plan and other development regulations. Possible changes will be identified as well as required studies, inventories and/or reports. Public work sessions.

October to December 2002 – Planning Commission will hold public hearings on proposed recommendations to amend Critical Areas regulations and/or development regulations and comprehensive plan. Studies/reports/inventories will be finished and presented to the Planning Commission for consideration during the final draft preparation.

January 2003 – Planning Commission will hold public workshops to prepare draft recommendations to the Board of County Commissioners.

February 2003 – Final recommendations will be transmitted to the BOCC.

February 2003 to March 2003 -- BOCC will hold public workshops and hearings on Planning Commission draft proposals.

April 2003 – Final BOCC draft amendments to the Critical Areas regulations, comprehensive plan and development regulations will be prepared.

May 2003 – Board of County Commissioners final action on draft amendments.

## FY '03 Deliverables

December 2002—County will prepare initial draft amendments and deliver same to OCD for comment together with summary of activities and any proposed changes to the timelines and or deliverables.

February 2003 – Planning Commission recommended amendments will be delivered to OCD for comment.

May 2003 – Adopted amendments will be sent to OCD with closeout report.

**Resources:****Budget: July 1, 2001 through June 30, 2002**

Activities	Grant Money	Local Money	In-Kind	Total
Salaries and benefits		\$ 37,300		\$ 37,300
Contracts	\$ 43,175	\$ 50,000		\$ 93,175
Goods and Services (Supplies, Publications, Misc)		\$ 5,500		\$ 5,500
Travel		\$ 200		\$ 200
Total				\$136,175

**Budget: July 1, 2002 through June 30, 2003**

Activities	Grant Money	Local Money	In-Kind	Total
Salaries and benefits		\$ 37,300		\$ 37,300
Contracts	\$ 43,175	\$ 50,000		\$ 93,175
Goods and Services (Supplies, Publications, Misc)		\$ 5,500		\$ 5,500
Travel		\$ 200		\$ 200
Total				\$136,175

**Status Reports**

Status reports will be submitted on March 15, 2002 and January 15, 2003 indicating progress to date and projected completion dates of work items for FY '02 and '03 respectively.

**Close-out Report**

A brief closeout report highlighting project accomplishments will be submitted no later than June 1, 2003.